

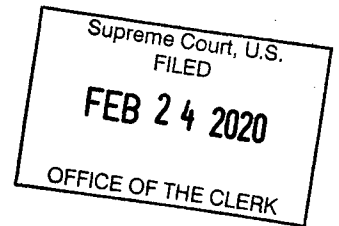
19-7874

No. 19-40174

6:15cv 1020

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JACKIE ANDREWS — PETITIONER
(Your Name)

vs.

LORIE DAVIS, DIRECTOR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JACKIE ANDREWS

(Your Name)

2101 F.M 369 N.

(Address)

Iowa Park Tx. 76367

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

DOES THE DISTRICT COURT HAVE JURISDICTION TO CONSIDER A RULE 60 (b) MOTION IN HABEAS PROCEEDINGS SO LONG AS THE MOTION" ATTACKS, NOT THE SUBSTANCE OF THE FEDERAL COURT'S RESOLUTION OF A CLAIM ON THE MERITS, BUT SOME DEFECT IN THE INTEGRITY OF THE FEDERAL HABEAS PROCEEDINGS

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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CASES

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GONZALEZ V. CROSBY 125 S.ct. 2641 (2005)

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STATUTES AND RULES

RULE 33.2

RULE 29

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DECEMBER 4, 2019.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment of the United States Constitution provides:

No person shall be..... deprived of Liberty, or property without due process of law: nor shall private property be taken for public use, without just compensation,

2. The Forteenth Amendment of the United States Constitution Provides:

All person born or naturalized in the United States and subject to the jurisdiction thereof, are citizen of the United states and of the States wherein they reside. No States shall make or enforce any law which shall abridge to privileges or immunities of citizens of the United States: nor shall any States deprive any person of life, liberty, or property, without due process of law, nor deny to any person within it's jurisdiction the equal protection of laws

STATEMENT OF THE CASE

On August 18, 1999 Petitioner was arrested and charged with Capital Murder.

On October 14, 1999, a Grand Jury of Smith County indicted him.

Petitioner pled not guilty and pursued trial on June 19, 2000.

On June 30, 2000 a jury found him guilty of Capital Murder

On February 6, 2002 the Twelfth Court of Appeals denied Petitioner's Direct Appeal.

On November 5, 2003 Petitioner filed his writ of Habeas Corpus under 28 u.s.c § 2254.

On May 20, 2004 the petition was dismissed because of the expiration of statute of limitations.

On April 20, 2005, the Fifth Circuit Court of Appeals denied his request for a Certificate of Appealability, thus dismissing his appeal.

On January 22, 2018 Petitioner filed his Rule 60 (b) Motion under Reason (6) Extraordinary Circumstances under a New Ruling pertaining to his innocence

The Rule 60 (b) Motion was denied on June 12, 2018

On April 4, 2019 the District Court denied A Certificate of Appealability

In May of 2019 Petitioner filed his COA

On December 4, 2019 the Fifth Circuit denied his COA.

No Rehearing was filed

REASONS FOR GRANTING THE PETITION

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE DISTRICT COURT WHEN THE DISTRICT COURT ORDERED PETITIONER TO GET AUTHORIZATION TO FILE HIS RULE 60(b) MOTION WHEN THE MOTION ONLY ATTACKED A DEFECT IN THE INTEGRITY OF THE FEDERAL HABEAS PROCEEDING

Petitioner filed his Rule 60 (b) Motion under Reason (6) "Extraordinary Circumstance", because of a New Ruling in *McQuiggin v. Perkins* 133 S.Ct 1924 (2013) that allow barred claims that was discovered after trial that can prove a person innocence under the Schulp standard. Generally, a proper case for relief from judgement under Rule 60 (b)(6)" any other reason" ground for relief is one of Extraordinary Circumstances or extreme Hardship. Fed.R. Civ.P. Rule 60 (b) 28 U.S.C.A. For example, a substance change in the law governing a claim can be Extraordinary Circumstance. See *Garcia v. Thaler* 793 F. Supp. 2d 894 (2011). Also see *Carrier v. Murray* 106 S.Ct 2639 (1986), an Extraordinary Circumstance case is where a Constitutional violation has "Probably" resulted in a conviction of one who is actually innocent. Petitioner's case presents a cumulation of both of a new ruling and innocence.

Petitioner's 2254 habeas application was time-barred by statue of limitation A.E.D.P.A on _____. Petitioner argued in his Rule 60 (b) Motion that because of the New Ruling in *McQuiggin* he's allowed to by pass the A.E.D.P.A and have the writ heard because claims in the writ that is barred can show his innocence. The argument is attacking the A.E.D.P.A. No claim is presented if the motion attacks "some defect in the integrity of the federal habeas proceedings. Likewise, a motion does not attack a Federal Court's determination on the merits if it" merely asserts that a

previous ruling which precluded a merits determination was in error-- for example, a denial for such reasons as failure to exhaust, a procedural default, or statute of limitation bar. This reasoning is illustrated in Gonzalez V. Crosby 125 S.ct 2641 (2005), in which the Petitioner moved for relief from judgement challenging the District Court's determination that his Habeas petition was time-barred under A.E.D.P.A. Because the Motion challenged only the statute of limitations that applied to the habeas proceeding and did not assert a claim, the Supreme Court held that it was not a second or successive habeas petition, and therefore can be ruled upon by the district court without Precertification.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jerilee Andrews

Date: February 21, 2020